820-1
Interim assistance is defined as assistance from state or county funds furnished to meet basic needs during the period for which such individual was eligible for SSI/SSP benefits, beginning with the month of application and ending with the receipt of the initial payment. (§46-337.24)

820-2
Federal regulations define interim assistance as the assistance the state gives a GA recipient (including payments to providers of goods and services on behalf of the recipient) to meet basic needs, starting with the month there is an application for SSI and eligibility for those benefits, and ending with and including the month SSI benefits begin. Interim assistance does not include assistance the state gives to or for any other person, nor does it include assistance payments financed wholly or partly with federal funds. (20 Code of Federal Regulations (CFR), §416.1902) This CFR section is based on federal law. The Federal Government has interpreted federal law to preclude the counties from collecting funds from the GA recipient which exceed the prorated SSI payment (when eligibility is initially established after the first of the month) in that same month. (42 United States Code §1383(g)(3))

820-3
Upon receipt of an initial SSI/SSP payment, the county shall deduct the amount of the interim assistance and send the remainder to the recipient or his/her representative payee as quickly as possible but in any event no later than ten working days from receipt of the initial payment. If the county has not forwarded the remittance to the recipient or the representative/payee by the tenth working day from the date of receipt, the county shall send the entire initial payment. When the county has forwarded the remittance within ten working days, mail delays or calculation errors shall not entitle the recipient to the entire initial payment. (§46-337.44)

820-4
The county is required to send the recipient or his/her representative payee a Notice of Action showing the initial payment received by the county, the amount deducted as reimbursement for interim assistance, and the amount being sent. The notice shall also include the right of the recipient to request a state hearing. (§46-337.442)

820-5
The period for which the county may reimburse itself extends from the first of the month in which the SSI/SSP application is made if the applicant was eligible in that month, through and including the month in which SSI/SSP payments begin, providing an individual authorization was signed before the initial payment was issued. (Handbook §46-337.52)

820-6
State hearings involving interim assistance shall follow the procedures in §22-000 et seq. State hearings shall be conducted by CDSS only when the issue is the apportionment of the initial payment received by the county, or when it is alleged the county has failed to comply with the requirements of §46-337.44. (§46-337.6)

825-1
State law provides that the CDSS shall establish and supervise a county-, or county

consortia - administered program, entitled the Cash Assistance Program for Immigrants (CAPI). This program shall begin October 1, 1998, and is to provide checks to immigrants who were discontinued from SSI/SSP effective September 30, 1998, as a result of their immigrant status. These initial checks shall be $10 less than the last SSI/SSP check.

Effective November 1, 1998, counties must begin to accept applications and establish the beginning date of aid. Counties must then determine eligibility and either issue CAPI payments, or authorize the CDSS to issue such payments, by December 1, 1998. (All-County Letter (ACL) No. 98-82, pp. 1-3, October 16, 1998)

825-2
The CDSS may initially implement the applicable provisions of the CAPI program through All-County Letter (ACL) or similar instructions from the Director of CDSS, despite the provisions of the Administrative Procedures Act (APA). However, by July 1, 1999 the Director must adopt regular or emergency regulations to implement the CAPI program in accord with the APA. (W&IC §§18943(a) and (b), effective August 21, 1998)

825-3
There are three categories of immigrants who entered the United States on or before August 21, 1996 who are potentially eligible for CAPI benefits. They are:

(1) Non-citizens whose SSI/SSP benefits were stopped effective September 30, 1998 solely due to their immigrant status.

(2) Non-citizens who do not meet the definition of "Qualified Alien". These individuals must provide evidence of their Permanent Residence Under Color of Law (PRUCOL) status. Receipt of SSI/SSP prior to August 22, 1996 generally establishes PRUCOL status. These individuals must also establish that they are aged, blind or disabled.

(3) Non-citizens lawfully admitted for permanent residence, or who otherwise meet the definition of Qualified Alien, and who are age 65 or older.

(All-County Letter (ACL) No. 98-82, p. 4, October 1, 1998)

825-3A REVISED 4/04
Two different sets of specific eligibility criteria exist for individuals who legally entered the United States on or after August 22, 1996. One set exists for basic CAPI and one for extended CAPI.

To be eligible for basic CAPI the immigrant may be potentially eligible for the CAPI program, if he/she is a sponsored individual and who is able to provide verification that:

(1) The sponsor has died.

(2) The sponsor is disabled, as defined in W&IC §11320.3(b)(3)(A).

(3) The sponsor or sponsor's spouse has abused the individual. ("Abuse" is determined in the same manner as defined in W&IC §§11495.1 and implemented by §42-701.2(d)(3)).

(All-County Letter (ACL) 98-82, p.5, October 16, 1998; §49-020.31, effective July 1, 1999; amended effective January 26, 2000 and amended again effective October 16, 2003)

825-3B
In order to be eligible for CAPI as an aged individual, a person must be 65 years of age or older. The applicant must submit evidence of date of birth by submitting a public record of birth, or a religious record of birth or baptism recorded before age 5. If those records are not available, other evidence may be used to establish the applicant's birth date. If the applicant alleges to be at least age 68, any document submitted that is at least three years old will be sufficient. (§49-025.1, as revised effective January 26, 2000)

825-3C
In order to be eligible for CAPI as a blind individual, a person must meet the requirements set forth in 20 Code of Federal Regulations (CFR) §416.981 and following, which govern eligibility for the Supplemental Security Income (SSI) program. (§49-025.2)

To be eligible for CAPI as a disabled individual, a person must meet the requirements set forth in 20 CFR §416.901 and following, which govern SSI eligibility (§49-025.3) Any person engaging in "substantial gainful activity" at the time of applying for CAPI will not be considered disabled. (§49-025.33)

The CDSS Disability and Adult Programs Division is responsible for making all blindness and disability determinations for CAPI. (§§49-025.22 and .34) A current determination of disability established for Title II Social Security Benefits, for SSI or for Medi-Cal establishes blindness or disability for Medi-Cal (§§49-025.221 and .341)

825-3D REVISED 4/04
To be eligible for extended CAPI, a non-citizen who meets the definition of a Qualified Alien or Permanently Residing Under Color of Law (as defined in §§49-005(q) and (p)) must have entered the United States on or after August 22, 1996 and be ineligible for basic CAPI under any of the conditions described in §49-020.31. (§49-020.32)

For those CAPI persons who are not exempt from deeming provisions, the period for deeming of a sponsor's income and resources shall be the later of ten years (previously five years) from the date of the sponsor's execution of the affidavit of support or the immigrant's arrival in the United States, whichever is later. (W&IC §18940(b), effective July 22, 1999, revised effective July 30, 2001)

825-3E
Assembly Bill (AB) 429 eliminates the sunset date for time-limited CAPI eligibility (originally established by AB 1111 and extended to September 30, 2001 by AB 2876). Counties shall continue eligibility for all CAPI time-limited recipients indefinitely, unless they become ineligible for some other reason. Counties are still responsible for conducting redeterminations at the appropriate 12-month interval for these cases.

All recipients of time-limited CAPI benefits must be sent a special notice that advises the recipient of the indefinite extension of their benefits. The following suggested language could be used for this notice:

“You were previously notified that your special time-limited CAPI benefits would only be paid through September 30, 2001. Your time-limited CAPI benefits will continue indefinitely (unless you become ineligible for some other reason). Other events could cause your benefits to be stopped prior to that date.”

Allowance notices should no longer contain any special message regarding time-limited benefits. Since the term “time-limited” no longer describes this special CAPI eligibility, it will hereafter be referred to as “extended CAPI”.

As before, all applications from new entrants (those who entered the U.S. on or after August 21, 1996) should first be evaluated for regular CAPI eligibility. If the individual is not eligible for regular CAPI, evaluate the individual for potential eligibility for extended CAPI. The applicant/recipient must meet all other CAPI eligibility requirements, except for the deceased, disabled, or abusive sponsor restrictions for new entrants, to be eligible for extended CAPI. Sponsor-deeming must be considered in all cases.

Effective August 1, 2001, AB 429 states that applicants and recipients of extended CAPI are all subject to a 10-year sponsor-deeming period regardless of which Affidavit their sponsor signed. The new 10-year deeming rule also applies to all of the current extended CAPI (previously time-limited) recipients effective August 1, 2001. This means that sponsor-deeming will continue to apply to current recipients whose sponsor-deeming period would have otherwise ended after 5 years but for the extension of the deeming period to 10 years under AB 429.

(All-County Letter No. 01-61, August 30, 2001)

825-3F
State regulations deal with a CAPI individual's entry into the United States as follows:

> "For purposes of determining eligibility for CAPI under the provisions of Welfare and Institutions Code Sections 18938 and 18940, 'entered the United Sates' or 'entry date' means the effective date of the non-citizen's current immigration status as determined by the Immigration and Naturalization Service, except in either of the following situations:
>
> ".41 The non-citizen is a current CAPI recipient whose immigration status was adjusted after he or she began receiving CAPI benefits. In the situation, the same entry date that was used to determine his or her initial CAPI eligibility will continue to be used for redetermination of eligibility.
>
> ".42 The non-citizen, as of August 21, 1996, had an immigration status that met the definition of "Qualified Alien" [as defined in MPP Section 49-002(q)(1)], and has maintained continuous residence in the United states since at least August 21, 1996. In this situation the effective date of the Qualified Alien status held by the non-citizen on August 21, 1996 will be deemed to be his or her 'entry date' for purposes of determining CAPI

eligibility even if the non-citizen later adjusts his or her immigration status."

(§49-020.4, effective January 23, 2003)

825-3G ADDED
4/04"Basic CAPI" refers to the original eligibility component of CAPI, set out in Welfare and Institutions Code (W&IC) §18938(a)(1) and (2). A non-citizen is potentially eligible for basic CAPI if he/she:

Entered the United States prior to August 22, 1996, or

Entered the United States on or after August 22, 1996 and has a dead or disabled (as defined in §49-020.312) sponsor, or is a victim of abuse by the sponsor or sponsor's spouse.

(§49-005 (b)

825-3H ADDED
4/04"Extended CAPI" refers to the more recent eligibility component of CAPI as set forth in Welfare and Institutions Code (W&IC) §18938(a)(3) which became effective October 1, 1999. A non-citizen is potentially eligible for "extended CAPI" if he/she entered the United States on or after August 22, 1996 and meets one of the following criteria:

(A) Does not have a sponsor.

(B) Has a sponsor who is not dead or disabled.

(C) Has a sponsor and is not a victim of abuse by the sponsor or sponsor's spouse.

(§49-005(e)(4)

825-4
In general, the federal and state laws and regulations governing the SSI/SSP program shall govern the CAPI program. (W&IC §18940) Benefits provided under Chapter 10.3, commencing with W&IC §18937 (the CAPI program) "...shall be equivalent to the benefits provided under the SSI/SSP program, Chapter 3, commencing with Section 12000 of Part 3" except that the benefit levels for individuals shall be reduced by $10 per month, and for couples shall be reduced by $20 per month. (W&IC §18941, effective August 21, 1998; §49-050.1, effective July 1, 1999)

825-4A
CAPI payment standards are equivalent to SSI/SSP payment standards, except that:

.11 The payment standard for individuals is $10 less than the SSI/SSP payment standard for individuals.

.12 The payment standard for eligible couples is $20 less than the SSI/SSP payment standard for eligible couples.

.13 The payment standard for couples when one member is receiving or applying for CAPI and the other is receiving SSI/SSP is $10 less than the SSI/SSP payment standard for eligible couples.

(§49-050.1)

825-4B
A person's living arrangement affects which CAPI payment standard determines the individual's benefit amount. Living arrangements are always determined as of the first moment of the month except in the throughout-a-month rule for institutions or reduced needs living arrangements. (§49-050.2)

"Independent living" means that one of the following conditions applies to the person (or spouse or parent whose income is deemed to the applicant or recipient living in the same home):

.211 Has ownership interest in the home.

.212 Has rental liability.

.213 Lives alone.

.214 Lives with others and pays a pro rata share of the shelter and/or food expenses.

.215 Lives with others and all members of the household receive public income maintenance payments.

(§49-050.21)

Independent living without cooking facilities means that the aged or disabled individual meets one of the criteria in §49-050.21, does not have a stove and refrigerator available for his or her use, and does not have meals provided as part of the living arrangement. (§49-050.22)

825-5
CAPI recipients (under the Director's interpretation of W&IC §18937 et seq.) "may be eligible for Medi-Cal, Food Stamps (including the California Food Assistance Program) or the In-Home Supportive Services Program." Counties should advise CAPI applicants or recipients of their potential eligibility for the other programs and make the appropriate referrals. (All-County Letter (ACL) 98-82, p.13, October 16, 1998)

825-6
Individuals have the same hearing and appeal rights under CAPI that they have under other state public assistance programs, including the right to adequate and timely notice (as described in Manual of Policies and Procedures Chapter 22), and including those rights set forth on the sample notices (e.g., the right to aid pending, to be represented, to have an interpreter). (All-County Letter (ACL) No. 98-82, p. 13 and Sample Notice NA 691, 9/98, October 16, 1998)

825-6A
The CAPI program must be administered under the administrative standards set forth in §10-001 and following, and under the civil rights standards set forth in §21-101 and following, unless specifically mandated to do otherwise by state regulations "or other departmental instructions." (§49-013.2)

825-6B
Counties or consortia of counties must administer the CAPI program in accord with federal and state laws that govern the SSI/SSP program as directed by the CDSS in the MPP "or other departmental instructions." (§49-013.1, as revised effective January 26, 2000) The counties or their consortia must also adhere to the "interpretation of applicable federal laws and regulations and their amendments contained in policy guidelines or instructions issued by the Social Security Administration, including the Program Operations Manual Systems (POMS)." (§49-013.11, effective January 26, 2000)

825-7
To be eligible for CAPI, an individual's countable resources cannot exceed $2000, and a couple's countable resources cannot exceed $3000. Resource determinations are made as of the first moment of the month, and applicants or recipients whose countable resources are below the allowable limit at that time meet the resource requirement for the entire month. (All-County Letter (ACL) No. 98-82, p. 8, and Attachment 6, October 16, 1998; §49-040.1 and .8, effective July 1, 1999)

825-7A
If a CAPI applicant or recipient sells, exchanges or replaces a resource, the receipts are considered to be resources. (§49-040.83) Other items received during a month are counted under the income rules. Then, if those items are retained, they count as resources as of the first moment of the following month. (§49-040.82)

825-7B
Payments to an individual which are required to be excluded from resources for purposes of determining eligibility for CAPI include those excluded by other federal statutes. (§49-040.3(j); 20 Code of Federal Regulations (CFR) §416.1236)

Excluded resources include, but are not limited to:

(a) The home and any adjoining land and related outbuildings as long as the recipient resides in the home.

(b) Household goods and personal effects to the extent their total equity value does not exceed $2000. Wedding and engagement rings, and any device (e.g., wheelchair, hospital bed) that is needed due to the applicant's physical condition is totally excluded.

(c) One automobile if it meets one of the following conditions:

(1) It is necessary for employment.

(2) It is necessary for the medical treatment of a specific or regular medical problem.

(3) It is modified for operation by or transportation of a handicapped person.

(4) It is necessary to perform essential daily activities.

(5) Its current market value does not exceed $4500. If the market value exceeds $4500, only the excess counts toward the resource limit.

(n) Either Title II Social Security, SSI/SSP received by a spouse or parent, or CAPI retroactive payments, for six months following the month of receipt.

(§49-040.3, as revised effective January 26, 2000)

825-7C
Resources include the resources of a “spouse” (as defined in §49-005(s)(3)) and are considered available whether or not the resources are actually available to the CAPI applicant or recipient. (§49-040.4)

825-7D
Resources of any noncitizen are deemed to include the resources of the noncitizen’s sponsor(s), whether or not living in the same household or actually available to the CAPI noncitizen. (§49-040.7) When the sponsor lives with his/her spouse, the resources of both are deemed available. (§49-040.72) The resources excluded under §49-040.3 apply to the sponsor’s resources. (§49-040.71) The resources deemed from the sponsor and his/her wife include only those countable resources which exceed $2000 (for one person) or $3000 (for a couple). (§49-040.73)

825-8
During the first two months of CAPI eligibility, and during the first two months there is a status change (e.g., from child to adult, or from couple to individual or vice versa), the budget month and the payment month are the same. The CAPI benefit amount is determined by subtracting countable income received in the budget month from the appropriate payment standard in the payment month.

In the third and subsequent months, "retrospective budgeting" is used, and countable income received two months prior to the payment month (i.e., the budget month) is subtracted from the appropriate payment standard in the payment month.

(All-County Letter (ACL) No. 98-82, p.13, October 16, 1998; §§49-055.1, .2, and .3, effective July 1, 1999)

825-8A
The 9th Circuit Court of Appeals has held that in computing the SSI payment, the Social Security Administration must not deduct non-recurring income more than once. (*Jones* v. *Shalala* (1993) 5 F. 3d 447, interpreting 42 United States Code §1382(c)(2)(A))

The CDSS has adopted regulations which state that nonrecurring income received in the first or second month of eligibility shall not be considered in determining the benefit

amount in the third and fourth month of eligibility, respectively. The CDSS has defined "nonrecurring income" to be a type of income received in one month (unearned, earned, deemed, in-kind) but not received at all in the next month. (§§49-055.211, .212, and .213, effective January 26, 2000)

825-8B
To be eligible for CAPI, an individual's or couple's countable income must be lower than the appropriate CAPI payment standard.

.11 Countable income means the amount that is left after subtracting any exclusions or disregarded amounts from an individual's gross income, plus that of a spouse or ineligible parent living in the same household. Disregarded amounts can include allocations for ineligible spouses, parents and children in the deeming process.

.12 Detailed income rules are found in 20 Code of Federal Regulations (CFR), Part 416.

(§49-035.1, as revised effective January 26, 2000)

The definition of income for CAPI purposes is the same as the one used for SSI/SSP and is found in 20 CFR §416.1102.

§49-035 sets forth 20 CFR §416.1102:

"Income is anything you receive in cash or in kind that you can use to meet your needs for food, clothing, and shelter. Sometimes income also includes more or less than you actually receive (see §416.1110 and §416.1123(b)). In-kind income is not cash, but is actually food, clothing, or shelter, or something you can use to get one of these."

(Handbook §49-035.2)

825-8C
For CAPI purposes, earned income consists of wages, net earnings from self-employment, payments for services performed in a sheltered workshop or work activities center, and certain royalties and honoraria.

.31 Net earnings from self-employment are counted on a taxable year basis. The yearly total is divided by the number of months in the taxable year to arrive at the monthly earnings.

.32 Other earned income is counted when it is received or set aside for the employee's use.

(§49-035.3, revised effective January 26, 2000)

Earned income exclusions are applied in the following order:

.41 Earned income excluded by other Federal law.

.42 Up to $10 of infrequent or irregular earned income.

.43 Up to $400 per month, but not more than $1,620 per year, for blind or disabled children regularly attending school.

.44 Any portion of the $20 monthly exclusion that has not been applied against unearned income in the same month.

.45 $65 of earned income in a month.

.46 Earned income used to pay impairment related work expenses (IRWE) for disabled (but not blind) individuals under age 65 or persons who received CAPI benefits as a disabled individual for the month prior to age 65.

.47 One-half of the remaining earned income in a month.

.48 Earned income used to meet any expenses reasonably attributable to the earning of income for blind individuals who are under age 65 or who received CAPI benefits as a blind individual for the month prior to age 65.

.49 Earned income used to fulfill an approved plan to achieve self support for blind and disabled persons under age 65 or who received CAPI benefits as a blind or disabled individual for the month prior to age 65.

(§49-035.4)

825-8D
Unearned income consists of all income that is not earned income and includes, but is not limited to, annuities, pensions, alimony, support payments, dividends, interest, rental income, prizes, gifts, gambling winnings, and in-kind support and maintenance (ISM).

.51 ISM means any food, clothing, or shelter that an applicant receives because someone else pays for or provides it.

.511 Shelter includes room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewer, and garbage collection services.

.52 ISM is valued in two different ways:

.521 When an applicant or recipient is living in another person's (relative or non-relative) household for an entire calendar month and receives both food and shelter from that person, the applicant or recipient is subject to the reduced needs CAPI payment standard.

(a) The reduced needs payment standard is used regardless of the actual value of the ISM received in this situation.

(b) A person subject to the reduced needs payment standard cannot be charged with any other ISM income.

(c) A person who pays a pro rata share of the household's food and/or shelter costs cannot be subject to the reduced needs payment standard.

.522 ISM is charged as unearned income subject to the presumed maximum value (PMV) when it is received in all situations other than the ones described in §49-035.521.

(a) The value of the ISM income charged equals the lesser of its actual value or the PMV.

(§49-035.5)

PMV means the maximum value that can be attributed to ISM. The value of the PMV equals one-third of the federal SSI benefit level plus $20. (§49-005(p)(1))

825-8E
One of the unearned CAPI income exclusions is the first $20 of any unearned income in a month other than income based on need. (§49-035.53(m))

825-8F
"In-kind support and maintenance from within the household must be developed when the individual is living in a non-public-assistance household with someone other than a spouse or minor child and either has rental liability or ownership interest and is receiving contributions from others, or is either purchasing food separately or earmarking food or shelter payments.

"In-kind support and maintenance from outside the household must be developed when a third party who does not live in the household makes a payment to a vendor for an item of the household's shelter or food. Two examples are rent-free shelter and rental subsidy.

"1. Rental subsidy must be developed when the applicant or recipient has rental liability (including room rentals within someone else's home) and someone in the household is related as parent or child to the landlord or landlord's spouse."

(§§49-035.522(b) and (c))

825-8G
The presumed maximum value (PMV) of ISM is one-third of the federal SSI level plus $20. Effective January 1, 2000, this raises the PMV from $186.66 to $190.66 for an individual, and from $270.33 to $276.33 for a couple. Effective January 1, 2001, the PMV was $196.66 for an individual, and it became $201.66 effective January 1, 2002. The PMV for a couple was $285.33 as of January 1, 2001; it increased to $292.33 effective January 1, 2002. (All-County Information Notice (ACIN) No. I-86-99, November 16, 1999; ACIN No. I-98-01, November 15, 2001)

825-8H
In CAPI deeming situations, the following rules apply:

(1) To compute the allowance for ineligible children in deeming situations, determine the difference between the federal benefit amount for an individual and for a couple for federal SSI benefits. Effective January 1, 2000, this increases the allowance from $251 to $257. In 2001 the allowance was $266 and in 2002 it was $272.

(2) The sponsor's allocation to the alien in deeming situations equals the federal SSI benefit level for an individual. Effective January 1, 2000, this raises the allocation from $500 to $512. In 2001 it was $530 and in 2002 it was $545.

(All-County Information Notice (ACIN) No. I-86-99, November 16, 1999; All-County Welfare Directors Letter No. 01-66, December 10, 2001)

825-8I
Income excluded from deeming from an ineligible parent or spouse in CAPI includes all of the following:

.731 All of the income exclusions listed in §§49-035.4 and 49-035.53.

.732 Any public income-maintenance payments, except SSI/SSP that the ineligible spouse receives, and any income which was counted or excluded in figuring the amount of that benefit.

.733 Income used to comply with the terms of court-ordered support.

.734 In-kind support and maintenance (ISM).

.735 IHSS paid to the ineligible spouse or parent(s) for providing chore, attendant or homemaker services to the applicant or recipient.

(§49-035.7)

825-8J
Immigrants whose sponsor has signed the New Affidavit of Support (New Affidavit or I-864) can be temporarily exempt from regular CAPI sponsor deeming if they meet requirements for the Indigence Exception. These immigrants will also be subject to the sponsor-deeming rules even if their sponsor is their spouse, or parent (for applicant/recipients who are minor children). The new requirements are effective for determining CAPI payments beginning September 1, 2002 or later, under this All-County Letter (ACL).

BACKGROUND

Sponsor deeming refers to the requirement that a sponsor's income and resources be considered as belonging to the immigrant who is receiving or applying for CAPI. The sponsor is an individual who signs an Affidavit of Support agreeing to support an immigrant as a condition of that immigrant's admission to the United States as a permanent resident.

The sponsor-deeming regulations in 20 Code of Federal Regulations (CFR), §416.1160 (made applicable to CAPI per W&IC §§49-035 and 49-040) require deeming to occur regardless of whether or not income of the sponsor is actually made available to the applicant/recipient. It does not provide for any exception when the sponsor abandons his or her responsibility to support the immigrant. It also states that when two different deeming rules could apply because the immigrant's sponsor is also his or her ineligible spouse or parent (of a minor child), the spouse-to-spouse or parent-to-child deeming rules would apply. (The instructions described above still apply to persons whose sponsor signed the Old Affidavit (I-134).)

The new deeming is contained in the Program Operations Manual System (POMS). The new deeming rules are not reflected in 20 CFR as of the date of this letter. Therefore, the instructions found in POMS will be used, in lieu of 20 CFR, as the basis for the instructions in this ACL that affect sponsor-deeming in CAPI for immigrants whose sponsor(s) signed the New Affidavit.

THE INDIGENCE EXCEPTION (Ref.: 8 United States Code, §§1631 and 1183a; POMS SI 00502.280)

GENERAL POLICY

Generally, if an immigrant's sponsor signed the New Affidavit, the income and resources of the sponsor (and the sponsor's spouse if living in the same household) are deemed to the immigrant for purposes of determining CAPI eligibility. This general rule is suspended under the indigence exception, in which case, the only income from the sponsor that is counted against the immigrant is the amount of cash or in-kind income that the immigrant actually receives from the sponsor. A sponsor's resources are considered to be the immigrant's resources only if the immigrant has an ownership interest in them, can convert them to cash, and is not legally restricted from using them.

NOTE: References throughout this ACL to "sponsor" also include the sponsor's spouse who lives in the same household as the sponsor.

Application of the Exception

The indigence exception applies when:

> Sponsor-deeming results in denial, suspension, or reduction of CAPI benefits; and

> The immigrant is unable to obtain both food and shelter; and

> The immigrant completes and signs the Indigence Exception Statement (form SOC 809); and

> The county determines that the indigence exception applies.

(Ref.: POMS SI 00502.280 B)

The indigence exception does NOT apply when:

> The immigrant lives with his or her sponsor. (Assume the sponsor is providing food and shelter.); or

> The immigrant lives with someone other than the sponsor and receives free room and board, even if the immigrant's income is less than the SSI rate.

(Ref.: POMS SI 00502.280 B)

In determining whether the immigrant is unable to obtain food and shelter consider:

> All of the immigrant's own income and resources (including SSI and other income that was excluded when determining CAPI, such as General Assistance and Food Stamps); and

> The income and resources of the immigrant's spouse (if living together) or parent(s) (if living with the minor immigrant); and

> Any cash, food, housing, or other assistance provided by other individuals or agencies (including the sponsor).

(Ref.: POMS SI 00502.280 B)

While income otherwise excludable for CAPI is counted for the indigence test, do not count items that are not income (e.g. medical and social services) under §49-035.6. Also, for the indigence test, in-kind support and maintenance (ISM) should be counted at its actual value, not the presumed maximum value (PMV). In determining the immigrant's resources for the indigence test, include all liquid resources, even excluded liquid resources such as burial funds. (Ref.: POMS SI 00502.280 B)

If the immigrant is living apart from his or her sponsor and not receiving free food and shelter in another person's household, determine that the immigrant is unable to obtain food and shelter if:

> The total income (of all kinds) that the immigrant receives from all sources is less than the federal SSI rate ($545 for an individual; $817 for a couple as of January 1, 2002); and

> The resources available to the immigrant are less than the applicable CAPI resource limit.

(Ref.: POMS SI 00502.280 B)

PERIOD WHEN THE INDIGENCE EXCEPTION APPLIES

When the criteria for this exception are met, deeming is suspended for 12 consecutive months under 8 USC §1631(e)(2). The 12-month period can begin at any time when all of the conditions are met. It can be effective with the first month of eligibility or in a subsequent month. During the 12 consecutive months of suspension (including any non-payment months within that period), sponsor deeming does not apply, even if the non-

citizen ceases to meet the indigence test (e.g., the sponsor's support increases). However, any changes in the non-citizen's income, including changes in the amount of income or in-kind support provided by the sponsor, are counted as income and would affect the CAPI payment amount.

HOW INCOME AND RESOURCES ARE COUNTED DURING THE EXCEPTION PERIOD

When deeming is suspended under this exception, the usual income policies (§49-035) are applied to any contributions (cash or in-kind) that the non-citizen receives from the sponsor or any other source. So, only the income that the non-citizen actually receives from the sponsor is counted for CAPI purposes. Under the indigence exception, if the sponsor provides no income or support, no income from the sponsor is chargeable.

Under the indigence exception, the resources policy described in §49-040.2 apply in determining countable resources for CAPI recipients and applicants; the sponsor's resources are not deemed to the immigrant. Resources owned by the sponsor are considered to be the immigrant's resources only if the immigrant: 1) has an ownership interest in them; and 2) has the right, authority, or power to convert the resource to cash; and 3) is not legally restricted from using the resources for his or her support.

(ACL No. 02-63, August 29, 2002)

825-8K ADDED
4/04"New Affidavit of Support" refers to the INS Form I-864. The new Affidavit is required for all applications for immigrant visas or for adjustment of status filed on or after December 19, 1997.

"Old Affidavit of Support" refers to the INS Form I-134 that was signed prior to the formulation and implementation of the new version of the Affidavit.

(§49-005(a)(1) and (2)

825-9
State law provides that an individual shall be potentially eligible for CAPI if his or her immigration status meets the eligibility criteria of the SSI/SSP in effect on August 21, 1996 but he or she is not eligible for SSI/SSP benefits solely because of his or her immigration status under Title IV of Public Law 104-193, and any amendments to that law. (W&IC §18938(a)(1); §49-030.1, effective July 1, 1999)

The law goes on to provide, that:

"Any person found to be eligible for federally funded SSI by the department shall be required to apply for SSI benefits. An individual may continue to receive benefits under this article if he or she fully cooperates in the application and administrative appeal process of the Social Security Administration. An individual shall continue to be eligible to receive benefits under this article if he or she receives an unfavorable decision from the Social Security Administration."

(W&IC §18939)

825-9A
In general, it is the responsibility of counties to assist applicants to complete an SSI/SSP application and an Interim Assistance Reimbursement (IAR) agreement concurrently with their CAPI application, and to submit these documents to the SSA. CAPI benefits cannot be issued until these documents have been completed, signed by the applicant, and submitted to the SSA.

CAPI applicants are not required to submit an SSI/SSP application when:

(1) Verification exists that an SSI/SSP application is currently pending.

(2 & 3) Verification, including a formal or an informal denial letter, from SSA has been issued after August 1, 1998 and within six months of the CAPI application, stating the individual is ineligible for SSI/SSP based on immigration status.

(4) The county has determined that the CAPI applicant is not a Qualified Alien (as defined in §49-005(q)(1), which implements Public Law 104-193), and is therefore ineligible for SSI/SSP.

(All-County Information Notice No. I-71-98, December 9, 1998; §§49-015.1 and .2, 49-030.1 and .2, effective July 1, 1999, and revised effective January 26, 2000)

825-10
It is the position of the CDSS, set forth in regulations effective July 1, 1999, that the counties may claim interim assistance reimbursement (IAR) for any month when the counties have provided financial assistance (typically general relief (GR) or general assistance (GA)) and the individual subsequently received CAPI benefits for that month, or any part of that month. Federal regulations (20 Code of Federal Regulations (CFR) §§416.1901 through 416.1922) will govern, unless the CDSS provides otherwise in an ACL or in "future instructions" or "future regulations".

The requirements for the county to receive state IAR include:

(1) There must be a signed IAR authorization from the GA/GR applicant. (§49-065.21, effective July 1, 1999)

(2) The county or consortium must issue, or request issuance of, a net retroactive CAPI payment (after withholding the IAR owed to the county) within 10 days of the date CAPI eligibility and payment amount have been determined. (All-County Letter No. 99-11, March 4, 1999; §49-065.333, effective July 1, 1999)

It is noted that under 20 CFR §416.1910, the state is required to issue a check (not request issuance), but has 10 working days (not 10 days) to issue such payment. While the CAPI program is required to follow federal and state laws and regulations governing the SSI/SSP program unless exempted from such laws (W&IC §18940.1) the Director of CDSS may implement the CAPI statutory provisions through ACL or similar instructions, through June 30, 1999. (W&IC §18943)

825-11
An Inter-County Transfer (ICT) means the transfer of responsibility for determination and maintenance of eligibility and payments for the CAPI recipient from one county (or consortium) to another when a CAPI recipient moves to another county. The ICT procedures are intended to ensure there shall be no unreasonable delay in the determination of eligibility and no interruption or duplication in payments, when a CAPI recipient moves to another county.

If a recipient moves from one county to another, and both counties are in the same CAPI consortium, then no ICT shall be necessary.

ICT Initiation and Notifications

An ICT shall be initiated by the transferring county (the county where the recipient formerly resided) after receiving notification of the recipient's move to a new (receiving) county. This notification can be from the recipient or the receiving county.

Within 10 calendar days from receiving notification of the recipient's move, the transferring county shall:

1. Notify the receiving county of the initiation of a case transfer and the expected date of discontinuance in its county.

2. Send copies of all necessary documentation to the receiving county.

3. Notify the recipient that due to his/her move to a new county, his/her CAPI payments and eligibility determination will become the responsibility of the receiving county as of a specific date.

The transferring county shall continue to have responsibility for authorizing and issuing payments until the transfer period is complete, at which time the receiving county becomes responsible. Responsibilities include overpayment recoupment.

Within 10 calendar days of receiving notification of the initiation of an ICT and supporting documentation, the receiving county shall:

1. Notify the transferring county of receipt of the notice of initiation of an ICT.

2. Contact the recipient to begin the process of establishing eligibility in its county.

(All-County Letter No. 99-87, October 7, 1999)

825-12
State regulations require the counties to make certain regulations, laws, and other policy material available to the public. The counties must do the following:

.1 One set of the regulations and handbook materials (including All-County Letters) of the Department of Social Services, the Welfare and Institutions Code (W&IC), the Health and Safety Code, and other laws relating to any form of public social service must be made available to the public during regular office hours in each

central or district county office administering public social services and in each local or regional office of the department. (W&IC §10608)

.2 These references shall be placed in the waiting or reception room or in a location available and convenient for public use.

.3 A sign shall be prominently posted in each waiting/room or reception room in appropriate languages as follows:

"Rules and regulations of the State Department of Social Services are available for your use. Please ask for the materials or manuals you wish to see."

.4 A signout book should be used to prevent loss of regulations or other materials for public use. The maintenance of the reference materials in a current and usable condition is a condition of compliance with the statute.

(Handbook §17-017)

825-13
It is the position of the CDSS that, despite the express language in W&IC §§18943(a) and (b), which limit CAPI changes made by All-County Letter (ACL) to those changes implemented by July 1, 1999, that the CDSS can still amend regulations (contrary to the provisions of the Administration Procedure's Act, Gov. Code §18940 et seq.) by ACL. Thus, the CDSS position is as follows:

The President signed HR 3443 into law on December 14, 1999. Among its provisions were three changes to the Social Security Act that affect eligibility for the SSI/SSP program. Since SSI/SSP law and regulations govern CAPI eligibility, these changes also affect the CAPI. The three areas of SSI/SSP change affecting eligibility are:

- Ineligibility for certain individuals who dispose of or transfer resources for less than fair market value.

- Assets held in trust may now be counted as a resource.

- A new penalty of SSI suspension for up to 24 months for individuals either found to have made a statement or representation of material fact on an SSI application or redetermination that the individual knew or should have known was false or misleading or found to have omitted a material fact.

Prior to enactment of Public Law (P.L.) 106-169, the Foster Care Independence Act of 1999, if an individual transferred or gave away assets, there was no penalty and that asset was no longer counted as a resource in determining SSI eligibility effective with the month after it was transferred or given away. Previously, a Special Needs or other trust was generally excluded from countable resources, if the individual did not have direct access to the trust. There were no specific eligibility sanctions for making false or misleading statements on an SSI application.

TRANSFER OF RESOURCES

An individual applying for or receiving CAPI who disposes of resources for less than fair market value is now ineligible for CAPI for a period up to 36 months. This provision is effective for resource transfers made on or after December 14, 1999. The provision applies to resource transfers made by the eligible individual (includes applicant), the individual's spouse, or by persons who are co-owners of the resource being transferred.

The look-back period begins with the look-back date, which is the date 36 months before the CAPI application date or the date on which the resources were transferred, whichever is later. This means that any resources transferred up to 36 months prior to the CAPI application date, or anytime thereafter will be subject to this provision. However, the look-back period cannot begin prior to December 14, 1999.

The period of ineligibility begins on the first day of the month immediately following the month of transfer. For example, if the resource is transferred on February 25th, the period of ineligibility begins on March 1st. The period of ineligibility can last up to, but no more than 36 months.

To determine the number of months of ineligibility, it is first necessary to determine the total, cumulative uncompensated value of any resources disposed of by the individual on or after the look-back date. The uncompensated value is then divided by the maximum CAPI benefit amount based on the individual's living arrangement on the applicable date. In the case of any fraction, round to the nearer whole number. The applicable date is the CAPI application date or, if later, the date on which the individual (or spouse) disposes of the resources for less than fair market value. The maximum CAPI amount is the amount shown on the CAPI Payment Standards chart for the appropriate living arrangement on the applicable date. The result is the number of months of ineligibility up to 36 months.

When one member of a couple receives SSI/SSP, divide the uncompensated value by the maximum "one Cash Assistance Program for Immigrants, one SSI/SSP" couple rate based on the CAPI applicant's living arrangement on the applicable date.

Fair market value is equal to the current market value of a resource at the time of the transfer. Current market value means the price of an item on the open market. Uncompensated value is the difference between the fair market value of a resource and the amount of compensation received by the individual in exchange for the resource.

Procedure Regarding Transfer of Resources

The transfer of resource question is asked on the Medi-Cal forms used for CAPI application -- Question 28 on the MC 210 and Question 34 on the SAWS 2. However, these questions ask if resources have been transferred in the last 30 months. Because of the December 14, 1999 effective date, this question is adequate as worded through May 2002.

Although the question is not on the redetermination form (SOC 804), the same information must be covered during the redetermination process. The SOC 804 will be revised as soon as feasible.

If the question is answered "yes", the county must determine the period of ineligibility, if any, in accordance with the rules described previously in this letter.

Exceptions to the Resource transfer Penalty (Period of Ineligibility)

1. Transfer of a Home

   The new transfer of resource penalty does not apply to transfer of an applicant's or recipient's home if the home was transferred to:

   - The spouse of the transferor;

   - A child of the transferor who is under age 21, or who is blind or disabled (as defined for SSI purposes);

   - The sibling of the transferor who has an equity interest in the home and who was residing in the transferor's home for a period of at least one year immediately before the date the transferor is institutionalized; or

   - A son or daughter of the transferor (other than a child under age 21 or who is blind or disabled) who was residing in the transferor's home for a period of at least two years immediately before the transferor is institutionalized, and who provided care to the transferor which permitted the transferor to reside at home rather than in such an institution or facility.

2. Transfers to a Spouse or Child

   The new transfer of resource penalty does not apply if the resources were transferred:

   - To the transferor's spouse, or to another person for the sole benefit of the transferor's spouse;

   - From the transferor's spouse to another person for the sole benefit of the transferor's spouse; or

   - To the transferor's child who is blind or disabled or to a trust for the benefit of the transferor's child who is blind or disabled.

3. Resources which were transferred to establish a trust solely for the benefit of an individual under age 65 who is disabled (as defined for SSI and CAPI purposes).

4. Evidence is provided that establishes that an individual intended to dispose of the resources either at fair market value or for other valuable consideration.

5. Evidence is provided that establishes that the resources were transferred exclusively for a purpose other than to qualify for SSI or CAPI.

6. Evidence is provided that establishes that all resources transferred for less than fair market value have been returned to the transferor.

7. The county determines under procedures established for SSI purposes that the denial of eligibility would be an undue hardship as determined on the basis of criteria to be established by SSA. (Hardship would likely include deprivation of food and shelter.)

8. Resources Transferred to a Trust Established After January 1, 2000.

   The new transfer of resource penalty does not apply to a resource transferred to a trust, which would a) be a countable resource as part of that trust under the SSI rules for counting trusts, or b) be counted as a resource except for a waiver of the rules for counting trusts based on the hardship exemption. (See exceptions to trust rule below.)

   However the penalty does apply to such a trust if:

   - Payments are made from the trust that are other than to, or for, the benefit of the individual; or,

   - The trust does not permit any payment to the individual under any circumstance.

TRUSTS

A trust established by an individual is counted as a resource for purposes of determining CAPI eligibility. An individual is considered to have established a trust if any of the assets of an individual (or the individual's spouse) are transferred to a trust other than by a will. If assets of the individual (or of the individual's spouse) are combined with assets from another person in an irrevocable trust, only the portion attributable to the individual (or spouse) would count as a resource under this provision.

This policy of counting a trust as a resource applies only to trusts established on or after January 1, 2000 and without regard to:

- The purpose for which the trust was established;

- Whether the trustees have or exercise any discretion under the trust;

- Any restrictions on whether distributions may be made from the trust; or

- Any restrictions on the use of distributions from the trust.

In the case of a revocable trust established by an individual, the corpus of the trust will be considered a resource of the individual. In the case of an irrevocable trust, the portion of the trust from which payment to or for the benefit of the individual or the individual's spouse could be made (under any circumstances) is a resource to the individual.

<u>Exceptions</u>

1. The county determines that application of this provision would cause the individual undue hardship under criteria to be established by SSA. (Hardship would likely include deprivation of food and shelter.)

2. The new provision does not apply to any trust described in §§1917(d)(4)(A) and (C) of the Social Security Act. Section 1917(d)(4)(A) trusts, known as "Medi-Cal pay-back trusts" provide that, upon the individual's death, the state will be reimbursed from the trust for Medi-Cal (Medicaid) expenditures made on behalf of the individual. Section 1917(d)(4)(C) trusts, known as "Medi-Cal pooled trusts" are administered by a nonprofit association and may contain the assets of a large number of individuals, and also require reimbursement to the state, upon the individual's death, for Medi-Cal expenditures made on behalf of the individual.

Definitions

Corpus
The corpus of a trust is all property and other interests held by the trust, including accumulated earnings and any other addition to the trust after its establishment. It does not include earnings or additions that are not counted as a resource in the month they are credited or transferred to the trust.

Asset
For purposes of this trust-counting rule, an asset is any income or resource of the individual or individual's spouse, including:

- Income that would otherwise be excluded under SSI rules (see MPP 49-035.4 and .53);

- Resources that would otherwise be excluded under SSI/SSP rules (see MPP 49-040.3);

- Any other payment or property to which the individual or individual's spouse is entitled, but does not receive or have access to because of action by:

- The individual or individual's spouse;

- A person or entity (including a court) with legal authority to act in place of, or on behalf of, the individual or individual's spouse;

- A person or entity (including a court) acting at the discretion of, or on the request of, the individual or individual's spouse.

Income
Unearned income, as described in MPP §49-035.5, now includes any earnings of, and additions to, the corpus of a trust established by an individual to which these new trust provisions apply.

Procedure Regarding Trusts

These rules and guidelines for counting trusts must be followed while processing a CAPI application or redetermination where the individual (or spouse) has a trust that was established on or after January 1, 2000. Use existing notices and language for excess income or resources when denying eligibility or discontinuing benefits based on the new rules for counting trusts.

PENALTIES FOR FALSE OR MISLEADING STATEMENTS

Any person who, for use in determining any initial or continuing right to or the amount of CAPI:

- Makes, or causes to be made, a statement or representation of a material fact that the person knows or should know is false or misleading;

- Omits a fact that the person knows or should know is material; or,

- Makes such a statement with knowing disregard for the truth is, in addition to any other penalties that may be prescribed by law; is ineligible for CAPI for the appropriate period described below.

Period of ineligibility

When the county determines the applicant/recipient has made a false statement or is guilty of other conduct described in the preceding paragraph, that person is ineligible for CAPI for a period of:

- 6 consecutive months for the first such determination for that person;

- 12 consecutive months for the second such determination for that person;

- 24 consecutive months for the third or subsequent such determination for that person.

Procedure

P.L. 106-169 allows SSA 6 months to develop regulations that will prescribe the process for making the determination that an individual is subject to a penalty under the conditions described above, including when the applicable penalty must begin. Counties must flag cases for which they believe the recipient meets the penalty conditions until SSA establishes its procedures and the Department issues additional instructions to the counties.

Effective Date

The penalties reflected in this subsection apply to statements and representations made on or after December 14, 1999.

(All-County Letter (ACL) No. 00-27, April 10, 2000; as of December 1, 2002 there are no proposed or adopted regulations to §49-000 et seq., nor has there been any ACL or All-

County Information Notice which indicates that the forms given to CAPI applicants or recipients have been changed to reflect these new CDSS rules)

825-13A
It is the CDSS position that it has authority to follow federal laws and regulations in the CAPI even without regulatory changes. Thus, the CDSS has determined that state law (W&IC §18940) requires, with limited exceptions, that the federal and State laws governing the Supplemental Security Income/State Supplementary Payment (SSI/SSP) program must also govern CAPI. Accordingly, the substantive federal laws governing SSI/SSP overpayments must also govern CAPI overpayments. Specifically, the federal overpayment provisions that allow for waiver of SSI overpayment recovery will also apply to CAPI overpayments. These provisions are found in 20 Code of Federal Regulations §416.550, which states:

"Waiver of adjustment or recovery of an overpayment of SSI benefits may be granted when (EXCEPTION: This section does not apply to a sponsor of an alien):

(a) The overpaid individual was without fault in connection with an overpayment, and

(b) Adjustment or recovery of such overpayment would either:

(1) Defeat the purpose of title XVI, or

(2) Be against equity and good conscience, or

(3) Impede efficient or effective administration of title XVI due to the small amount involved."

(All-County Letter No. 00-73, October 17, 2000)

825-20
The Social Security Administration (SSA) has issued a Ruling which sets forth the method for determining disability for those individuals who are over age 65. That Ruling provides, in pertinent part, the following.

In general, the regulations and procedures for determining disability for adults under title XVI of the Act who are under age 65 are used when determining whether an individual age 65 or older is disabled, except as provided later in this Ruling.

To determine if an adult is disabled as defined in the Act, adjudicators generally use the 5-step sequential evaluation process set out in 20 Code of Federal Regulations (CFR) §416.920.

Step 1--Is the Individual Working?

If the individual is working, and the work is substantial gainful activity SGA (see 20 CFR §§416.971-416.976), the individual is not disabled regardless of his or her medical condition, age, education, or work experience.

Step 2--Does the Individual Have a Severe Impairment?

An individual who does not have an impairment or combination of impairments that is "severe" will be found not disabled.

An impairment(s) is considered "severe" if it significantly limits an individual's physical or mental abilities to do basic work activities. An impairment(s) that is "not severe" must be a slight abnormality, or a combination of slight abnormalities, that has no more than a minimal effect on the ability to do basic work activities. It is incorrect to consider an impairment to be "not severe" because the impairment's effects are "normal" for a person of that age.
As in any claim, consider signs, symptoms, and laboratory findings when determining whether an individual age 65 or older has a medically determinable impairment (see 20 CFR §§416.908 and 416.928). The likelihood of the occurrence of some impairments increases with advancing age; e.g., osteoporosis, osteoarthritis, certain cancers, adult-onset diabetes mellitus, impairments of memory, hypertension, and impairments of vision or hearing. It is incorrect to disregard any of an individual's impairments because they are "normal" for the person's age.

When an individual has more than one medically determinable impairment and each impairment by itself is "not severe," assess the impact of the combination of those impairments on the individual's ability to function. A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, are "not severe"; i.e., do not have more than a minimal effect on the individual's physical or mental ability(ies) to perform basic work activities.

Special Rule for Individuals Age 72 or Older

Generally, Step 2 of the sequential evaluation process is used as a "screen" to deny individuals with impairments that would have no more than a minimal effect on their ability to work even if we considered their age, education, and work experience. However, with advancing age, it is increasingly unlikely that individuals with medically determinable impairments will be found to have minimal limitations in their ability to do basic work activities. By age 72, separate consideration of whether an individual's medically determinable impairment(s) is "severe" does not serve the useful screening purpose that it does for individuals who have not attained age 72. Therefore, if an individual age 72 or older has a medically determinable impairment(s), that impairment(s) will be considered to be "severe," and evaluation must proceed to the next step of the sequential evaluation process.

Step 3--Does the Individual Have an Impairment(s) That Meets or Equals an Impairment Listed in Appendix 1?

When an individual has a severe impairment(s) that meets or medically equals the requirements for one of the impairments in the Listing of Impairments in Appendix 1, Subpart P, 20 CFR Part 404, and meets the duration requirement, the individual is disabled.

When Disability Cannot Be Found at Step 3--Assessing Residual Functional Capacity (RFC)

When the individual does not have an impairment(s) that meets or equals the requirements for a listed impairment, assess the individual's RFC. The RFC assessment evaluates the ability of an individual to perform both physical and mental work-related activities despite his or her impairment(s). The assessment considers all of the individual's medically determinable impairments, including those that are "not severe," and all limitations or restrictions caused by symptoms, such as pain, that are related to the medically determinable impairment(s). The assessment is based upon consideration of all relevant evidence in the case record, including medical evidence and relevant nonmedical evidence, such as observations of lay witnesses of an individual's apparent symptomatology, or an individual's own statement of what he or she is able or unable to do.

When assessing RFC in an initial claim, do not find that an individual has limitations or restrictions beyond those caused by his or her medically determinable impairment(s). Limitations or restrictions due to factors such as age, height, or whether the individual has ever engaged in certain activities in his or her Past Relevant Work (PRW) (e.g., lifting heavy weights) are, per se, not considered in assessing RFC.

Step 4--Does the Individual Have an Impairment(s) That Prevents Him or Her from Performing Past Relevant Work?

The RFC assessment discussed above is first used at Step 4 of the sequential evaluation process to determine whether the individual is capable of doing PRW. The rules and procedures used to make this determination for individuals under age 65 are also applicable to individuals age 65 or older. This includes consideration of whether the individual can perform his or her PRW as he or she actually performed it or as it is generally performed in the national economy. If the individual's PRW was performed in a foreign economy, consider whether the individual can perform his or her PRW as he or she described it. However, if the work the individual did in a foreign economy also exists in the U.S. economy, consider whether he or she can perform the work as it is generally performed in the national economy. If the individual can perform his or her PRW, the individual will be found not disabled.

Step 5--Can the Individual Do Other Work?

The last step of the sequential evaluation process requires a determination as to whether an individual can do other work considering his or her RFC, age, education and work experience.

Special Medical-Vocational Profiles Showing an Inability to Make an Adjustment to Other Work

If the individual's impairment(s) does preclude the performance of PRW, or if the individual does not have PRW, two special medical-vocational profiles must be considered before referring to Appendix 2, Subpart P, 20 CFR Part 404 (hereafter Appendix 2).

The "arduous unskilled physical labor" profile applies when an individual:

> Is not working;

> Has a history of 35 years or more of arduous unskilled physical labor;

> Can no longer perform this past arduous work because of a severe impairment(s); and

> Has no more than a marginal education (generally 6th grade or less).

The "no work experience" profile applies when an individual:

> Has a severe impairment(s);

> Has no past relevant work;

> Is age 55 or older; and

> Has no more than a limited education (generally, 11th grade or less).

If either of these profiles applies, a finding of "disabled" must be made.

Applying the Criteria in Appendix 2 to Subpart P of 20 CFR Part 404

If the special medical-vocational profiles are not applicable, use the rules in Appendix 2 to determine whether the individual has the ability to do other work. The highest age category used in Appendix 2 is age 60-64, "closely approaching retirement age." However use the rules for ages 60-64 when making determinations for individuals age 65 or older at Step 5.

Under those rules, individuals age 65 or older who are limited to "sedentary" or "light" work will be found disabled unless their PRW provided them with transferable skills or they are at least a high school graduate and their education provides for direct entry into skilled work. As set out in §§201.00(f) and 202.00(f) of Appendix 2, to find transferability of skills for individuals age 65 or older who are limited to sedentary or light work, there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

Individuals age 65 or older who can perform the full range of "medium" work are found disabled when they have no more than a marginal education and their PRW was unskilled or they had no PRW, or when they have no more than a limited education and no PRW. In addition, some individuals who do not meet these criteria may also be found disabled as set forth in the next section.

Special Rule for Determining Disability for Individuals Age 65 or Older Who Can Perform Medium Work But Who Are Illiterate in English or Unable to Communicate in English

Section 203.00 of Appendix 2 contains rules used to make disability determinations for individuals who retain the functional capacity to perform medium work. The capacity to perform medium work also includes the capacity to perform light and sedentary work, and represents the capability to perform a substantial number of jobs. For individuals under age 65 considered under this section, this capability represents a substantial

vocational scope even for individuals who are illiterate in English or unable to communicate in English.

However, beginning at age 65, the individual's age is considered to be a factor that imposes greater limits on vocational adaptability. If illiteracy in English or the inability to communicate in English further limits such an individual, a finding of "disabled" is warranted unless the individual's PRW was skilled or semiskilled and provided the individual with transferable skills. For a finding of transferability of skills to medium work for an individual age 65 or older, there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

Duration

As indicated earlier, the likelihood of the occurrence of some impairments, such as osteoporosis, osteoarthritis, certain cancers, adult-onset diabetes mellitus, impairments of memory, hypertension, and impairments of vision or hearing, increases with advancing age. Moreover, such impairments are more likely to be chronic than acute. Therefore, be especially careful before concluding that an impairment in an individual age 65 or older will not meet the 12-month duration requirement.

(Social Security Ruling No. 99-3p)

825-21
The Social Security Administration (SSA) requires that adjudicators make special efforts to obtain evidence from individuals 65 or older. The SSA has set forth the following requirements.

When obtaining the medical history of an individual age 65 or older, it is important to be alert to and address allegations of impairments that are commonly associated with the aging process, such as osteoporosis, arthritis, loss of vision, hearing loss, and memory loss. Allegations may be raised in response to specific questions about the individual's impairment(s). Be alert to allegations raised in other evidence in the file. For example, questionnaires about activities of daily living may contain statements like "I have difficulty walking or climbing stairs because my legs hurt," "I can't clean my apartment because my back hurts," or "I don't read much anymore because I don't see well." These statements constitute allegations of impairment(s). Therefore, adjudicators must:

> Review the case file thoroughly to identify all allegations or other indications of impairment.

> Be aware that the medical evidence or third party statements can raise additional allegations.

> When contacting an individual age 65 or older, be alert to statements indicating the presence of an impairment(s) commonly associated with the aging process.

> Consider all signs or symptoms indicative of an impairment(s), including those impairments caused by degenerative changes associated with the aging process.

<u>Purchasing Medical Evidence</u>

Our regulations, at 20 Code of Federal Regulations (CFR) §§416.912(f) and 416.917, indicate that we will purchase CEs when the individual's medical sources cannot or will not give us sufficient medical evidence about the individual's impairment for us to determine if he or she is disabled. Section 416.919(f) further provides that we will purchase only the specific examinations and tests that we need to make a determination or decision. Due to the wide range of allegations contained in cases of individuals age 65 or older, evidence addressing more than one body system may need to be purchased. In these situations, it is usually appropriate to purchase general medical examinations rather than examinations targeted at particular body systems. This will ensure that all allegations of impairment are evaluated, and will reduce the burden on the individual.

Failure to Cooperate

Individuals filing for benefits based on disability or blindness have certain responsibilities for furnishing, or helping to obtain, needed evidence. §§20 CFR 416.912(c), 416.916, and 416.918 describe these responsibilities. However, due to factors such as possible language barriers or limited education, some individuals age 65 or older may not understand, or be able to comply with, requests to submit evidence or attend a CE.

If it appears that an individual age 65 or older is not cooperating, adjudicators must take the following additional actions when the individual does not have an appointed representative, or when the appointed representative has requested direct dealings with the individual.

If an individual age 65 or older has not supplied evidence or taken a requested action and a need for that evidence still exists, the adjudicator must:

> Contact the individual to determine why he or she has not complied with request. If it appears that the individual needs personal assistance, including interpreter assistance, to complete forms, request field office assistance.

> Contact a third party (i.e., someone other than the individual's representative) if one has been identified, about assisting the individual at the same time the adjudicator contacts the individual.

If an individual age 65 or older did not attend a CE, the adjudicator must:

> Contact the individual to determine why he or she did not attend the CE.

> Make at least two attempts at different times on different days to contact the individual by telephone. (A busy signal does not constitute an attempt.)

> Send the claimant a call-in letter if telephone contact is not possible or successful.

> Contact a third party, if one has been identified, about assisting the claimant at the same time contact is attempted with the claimant.

> When contact is made with the individual or the third party, explain that the CE is for evaluation purposes only, and that no treatment will be required.

> Reschedule the CE if the individual had a good reason for not attending the prior CE (e.g., he or she had transportation problems or was out of the country at the time of the CE) and indicates a willingness to attend a rescheduled CE.

Non-English-Speaking or Limited-English-Proficiency Individuals

For all the development issues discussed above, adjudicators must there is a responsibility to obtain the services of a qualified interpreter if the individual requests or needs one. This includes providing an interpreter at a CE if the CE provider is not sufficiently fluent in the individual's language.

(Social Security Ruling No. 99-3p)

826-1 ADDED
4/04 Income of a sponsor of a non-citizen may be deemed to a CAPI applicant or recipient regardless of where the sponsor is living. The sponsor's income includes the income of the sponsor's spouse if the sponsor and spouse live together.

The length of the deeming period depends on whether the sponsor signed the old or new Affidavit of Support and for a non-citizen who entered the United States on or after August 22, 1996, upon whether the non-citizen is eligible for basic CAPI or extended CAPI.

(§49-035.723)

826-1A ADDED
4/04"New Affidavit of Support" refers to the INS Form I-864. The new Affidavit is required for all applications for immigrant visas or for adjustment of status filed on or after December 19, 1997.

"Old Affidavit of Support" refers to the INS Form I-134 that was signed prior to the formulation and implementation of the new version of the Affidavit.

(§49-005(a)(1) and (2)

826-1B ADDED
4/04 Sponsor deeming rules apply regardless of whether or not the sponsor actually provides the non-citizen with any support. Sponsor-deeming rules include counting the income and resources of the sponsor as belonging to the non-citizen.

(§49-037.1)

826-2 ADDED 4/04
Deeming from the sponsor who signed a New Affidavit of Support applies to a non-citizen who is eligible for basic CAPI unless the sponsor dies or the non-citizen becomes a naturalized citizen or the non-citizen is credited with 40 quarters of coverage as defined under Title II of the Social Security Act.

For a non-citizen who is ineligible for basic CAPI, deeming from a sponsor who signed a New Affidavit of Support applies for 10 years from the later of the date the sponsor executed the Affidavit or the date the non-citizen arrived in the United States.

Sponsor deeming does not apply to either basic CAPI or extended CAPI if the sponsor signed the New Affidavit of Support and any of the following is true:

- The non-citizen, the minor child of the non-citizen or the parent of the non-citizen child is a victim of abuse as defined in §49-020.313, and the victim is living in a different household than the abuser; or

- The county determines that the non-citizen is a victim of abuse by his/her sponsor or sponsor's spouse; or

- The non-citizen meets indigence exception criteria in §49-037.4.

(§49-037.2)

826-3 ADDED
4/04 Sponsor deeming applies to a non-citizen who is eligible for basic CAPI if the sponsor signed an Old Affidavit of Support unless the sponsor dies or the non-citizen has resided in the United States for three years since the date of admission for permanent residence as established by the INS.

For a non-citizen who is ineligible for basic CAPI, deeming from a sponsor who signed an Old Affidavit of Support applies for 10 years from the later of the date the sponsor executed the Affidavit or the date the non-citizen arrived in the United States.

Sponsor deeming does not apply to either basic CAPI or extended CAPI if the sponsor signed the Old Affidavit of Support and any of the following is true:

- The non-citizen becomes blind or disabled as defined for SSI/SSP purposes after admission to the United States; or

- The non-citizen is not Lawfully Admitted for Permanent Residence to the United States as determined by INS; or

- The county determines that the non-citizen is a victim of abuse by his/her sponsor or sponsor's spouse.

(§49-037.3)

826-4 ADDED 4/04
The indigence exception applies to a non-citizen whose sponsor signed the New Affidavit of Support.

The indigence exception applies when all of the following are met:

- Sponsor deeming results in a denial, suspension, or reduction of CAPI benefits;

- The non-citizen is unable to obtain both food and shelter;

- The non-citizen completes and signs the (SOC809) CAPI Indigence Exception Statement; and
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- The county determines the indigence exception applies.

(§49-037.41)

826-4A ADDED 4/04
The indigence exception does not apply when the non-citizen lives with his/her sponsor or the non-citizen lives with someone other than the sponsor and receives free room and board.

(§49-037.42)

826-4B ADDED 4/04
If the non-citizen is living apart from his/her sponsor and not receiving free food and shelter in another person's household, the non-citizen shall be considered unable to obtain food and shelter if:

- The non-citizen's total gross income from all sources is less than the federal SSI Individual Rate if the non-citizen is not living with his/her spouse, or the SSI Couple rate if the non-citizen is living with his/her spouse, and

- The resources available to the non-citizen are less than the applicable CAPI resource limit.

(§49-037.43)